

Judge John C. Coughenour

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS HOGAN,

Defendant.

NO. CR16-154JCC

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Bruce F. Miyake, Assistant United States Attorney for said District, Rose Gibson and Jared Fishman, Trial Attorneys for the Civil Rights Division, and NICHOLAS HOGAN, and his attorney, Wayne Fricke, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure

11(c)(1)(B):

1. **Information.** Defendant agrees to enter a plea of guilty to Deprivation of Rights Under Color of Law, 18 U.S.C. § 242, as alleged in the Information.

2. **Dismissal of Indictment.** The United States will make a motion to the court to dismiss the Indictment in *United States v. Hogan*, CR16-154JCC, at the time of

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1 sentencing, if the United States Determines that the Defendant has fully complied with all
2 the obligations under this agreement.

3 **3. The Charge.** Defendant, having been advised of the right to have this
4 matter tried before a jury, agrees to waive that right and enters a plea of guilty to the of
5 Deprivation of Rights under Color of Law, in violation of Title 18, United States Code,
6 Section 242.

7 By entering a plea of guilty, Defendant hereby waives all objections to the form of
8 the charging document. Defendant further understands that before entering his guilty
9 plea, he will be placed under oath. Any statement given by Defendant under oath may be
10 used by the United States in a prosecution for perjury or false statement.

11 **4. Elements of the Offense.** The elements of the offense of Deprivation of
12 Rights Under Color of Law, to which Defendant is pleading guilty are as follows:

13 First, the defendant acted under color of law;

14 Second, the defendant deprived an individual of a right guaranteed under
15 the Constitution or laws of the United States;

16 Third, the defendant acted willfully.

17 **5. The Penalties.** Defendant understands that the statutory penalties
18 applicable to the offense to which he is pleading guilty are as follows: A maximum term
19 of imprisonment of up to one year, a fine of up to one hundred thousand dollars
20 (\$100,000.00), a period of supervision following release from prison of up to one year,
21 and a mandatory special assessment of twenty-five dollars (\$25.00). If a probationary
22 sentence is imposed, the probation period can be for up to five (5) years. Defendant
23 agrees that the special assessment shall be paid at or before the time of sentencing.

24 Defendant understands that supervised release is a period of time following
25 imprisonment during which he will be subject to certain restrictive conditions and
26 requirements. Defendant further understands that if supervised release is imposed and he
27 violates one or more of the conditions or requirements, Defendant could be returned to

1 | prison for all or part of the term of supervised release that was originally imposed. This
 2 | could result in Defendant's serving a total term of imprisonment greater than the statutory
 3 | maximum stated above.

4 | Defendant understands that as a part of any sentence, in addition to any term of
 5 | imprisonment and/or fine that is imposed, the Court may order Defendant to pay
 6 | restitution to any victim of the offense, as required by law.

7 | Defendant agrees that any monetary penalty the Court imposes, including the
 8 | special assessment, fine, costs, or restitution, is due and payable immediately and further
 9 | agrees to submit a completed Financial Statement of Debtor form as requested by the
 10 | United States Attorney's Office.

11 | **6. Rights Waived by Pleading Guilty.** Defendant understands that by
 12 | pleading guilty, he knowingly and voluntarily waives the following rights:

- 13 | a. The right to plead not guilty and to persist in a plea of not guilty;
- 14 | b. The right to a speedy and public trial before a jury of his peers;
- 15 | c. The right to the effective assistance of counsel at trial, including, if
 16 | Defendant could not afford an attorney, the right to have the Court
 17 | appoint one for him;
- 18 | d. The right to be presumed innocent until guilt has been established
 19 | beyond a reasonable doubt at trial;
- 20 | e. The right to confront and cross-examine witnesses against Defendant
 21 | at trial;
- 22 | f. The right to compel or subpoena witnesses to appear on his behalf at
 23 | trial;
- 24 | g. The right to testify or to remain silent at trial, at which trial such
 25 | silence could not be used against Defendant; and
- 26 | h. The right to appeal a finding of guilt or any pretrial rulings.

1 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
2 guaranteed what sentence the Court will impose.

3 8. **Restitution.** Defendant shall make restitution to M.S. in the amount to be
4 determined at the time of sentencing, with credit for any amounts already paid. Said
5 amount shall be due and payable immediately and shall be paid in accordance with a
6 schedule of payments as proposed by the United States Probation Office and ordered by
7 the Court.

8 9. **Statement of Facts.** The parties agree on the following facts. Defendant
9 admits he is guilty of the charged offense or offenses:

10 a. In May of 2011, NICHOLAS HOGAN was a commissioned police
11 officer with the Tukwila Police Department.

12 b. On May 20, 2011, HOGAN was on duty as Tukwila Police Officer
13 when he responded to a call of a fight on the Pacific Highway, Tukwila, Washington. He
14 contacted M.S. and arrested him on a misdemeanor warrant. Officer Hogan took M.S. to
the King County jail but the Jail would not accept him because of his injuries.

15 c. HOGAN then took M.S. to Harborview Medical Center
16 (Harborview) for medical treatment. After arriving at Harborview, HOGAN ordered
17 M.S. out of his patrol car. When M.S. refused, HOGAN grabbed M.S. in an attempt to
18 remove him from the car. M.S. clenched HOGAN's arm. HOGAN pulled his arm out of
the clench. M.S. turned toward HOGAN at which point, HOGAN kneed M.S. in the
19 head multiple times. HOGAN then escorted the handcuffed M.S. into the emergency
room.

20 d. After arriving in the emergency room, HOGAN and M.S. began
21 arguing. M.S. called HOGAN names and threatened him. In response, HOGAN began
22 pushing the handcuffed M.S. He repeatedly shoved M.S., who was in handcuffs, down a
hallway until M.S. fell. HOGAN then got on top of M.S. and held him down with a knee
23 in M.S.'s back.

24 e. Harborview's security staff saw this altercation and believed the use
25 of force was inappropriate. They offered to get a gurney so M.S. could be restrained.
26 HOGAN agreed and M.S. was put in four point restraints on a gurney.

27 f. In these restraints, M.S. had limited movement including that he
28 could not lift his arms or legs.

1 g. M.S. was taken to the triage area of the emergency room and placed
2 in a curtained bed area. HOGAN accompanied M.S. to the bed area and remained in the
3 curtained area. He sat next to M.S. near his head.

4 h. While alone in the curtained area, M.S., while still in restraints, told
5 HOGAN he was going to sue him and called him names and sat up. HOGAN sprayed the
6 restrained M.S. in his eyes and face with Oleoresin Capsicum (OC) spray. After spraying
7 M.S., HOGAN sat back down.

8 i. Harborview Security was alerted about the incident and responded.
9 One of the staff saw a distressed M.S. with his eyes watering and nose dripping. M.S.
10 asked for help. The staff asked HOGAN what happened and he responded that M.S. got
11 mouthy.

12 j. Hogan knew the use of the OC spray was not necessary and
13 therefore unreasonable under the circumstances.

14 10. **United States Sentencing Guidelines.** Defendant understands and
15 acknowledges that the Court must consider the sentencing range calculated under the
16 United States Sentencing Guidelines and any possible departures under the Sentencing
17 Guidelines together with the other factors set forth in Title 18, United States Code,
18 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
19 history and characteristics of the defendant; (3) the need for the sentence to reflect the
20 seriousness of the offense, to promote respect for the law, and to provide just punishment
21 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
22 conduct; (5) the need for the sentence to protect the public from further crimes of the
23 defendant; (6) the need to provide the defendant with educational and vocational training,
24 medical care, or other correctional treatment in the most effective manner; (7) the kinds
25 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
26 avoid unwarranted sentence disparity among defendants involved in similar conduct who
27 have similar records. Accordingly, Defendant understands and acknowledges that:

28 a. The Court will determine applicable Defendant's Sentencing
Guidelines range at the time of sentencing;

1 b. After consideration of the Sentencing Guidelines and the factors in
2 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
3 maximum term authorized by law;

4 c. The Court is not bound by any recommendation regarding the
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
6 range offered by the parties or the United States Probation Department, or by any
7 stipulations or agreements between the parties in this Plea Agreement; and

8 d. Defendant may not withdraw his guilty plea solely because of the
9 sentence imposed by the Court.

10 11. **Acceptance of Responsibility.** At sentencing, *if* the district court
11 concludes Defendant qualifies for a downward adjustment acceptance for acceptance of
12 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
13 greater, the United States will make the motion necessary to permit the district court to
14 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
15 because Defendant has assisted the United States by timely notifying the United States of
16 his intention to plead guilty, thereby permitting the United States to avoid preparing for
17 trial and permitting the Court to allocate its resources efficiently.

18 12. **Recommendation.** The government agrees to recommend a guidelines
19 sentence. Defendant understands, however, that the maximum sentence for the charged
20 offense is one year. Defendant understands that this recommendation is not binding on
21 the District Court. Defendant understands that he is not entitled to withdraw his plea of
22 guilty if the district court does not follow this recommendation.

23 13. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
24 the United States Attorney's Office for the Western District of Washington agrees not to
25 prosecute Defendant for any additional offenses known to it as of the time of this
26 Agreement that are based upon evidence in its possession at this time and arise out of the
27 conduct giving rise to this investigation. In this regard, Defendant recognizes the United

1 States has agreed not to prosecute all of the criminal charges the evidence establishes
 2 were committed by Defendant solely because of the promises made by Defendant in this
 3 Agreement. Defendant agrees, however, that for purposes of preparing the Presentence
 4 Report, the United States Attorney's Office will provide the United States Probation
 5 Office with evidence of all conduct committed by Defendant.

6 Defendant agrees that any charges to be dismissed before or at the time of
 7 sentencing were substantially justified in light of the evidence available to the United
 8 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 9 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
 10 (1997).

11 **14. Agreement Regarding Law Enforcement Commission and**

12 **Employment.** As part of this agreement, Defendant agrees to resign his law
 13 enforcement commission in any law enforcement agency, no later than the date of
 14 sentencing. Defendant further agrees not to seek reinstatement of any law enforcement
 15 commission, or seek a new law enforcement commission, or seek employment in any law
 16 enforcement agency or law enforcement related employment, including, but not limited
 17 to any city, county, state, or federal policing or corrections positions, or that of a private
 18 security guard, or any position that requires the carrying of a firearm, for a period of 15
 19 years beginning from the date of this Plea Agreement. *This agreement does not preclude*
Mr. Hogan from working in the field of computer security or consulting. NW

20 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
 21 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 22 Agreement and Defendant may be prosecuted for all offenses for which the United States
 23 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 24 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 25 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
 26 Defendant has waived any objection to the re-institution of any charges in the Indictment
 27 that were previously dismissed or any additional charges that had not been prosecuted.

Defendant further understands that if, after the date of this Agreement, Defendant should engage in illegal conduct, or conduct that violates any conditions of release or the conditions of his confinement, (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States is free under this Agreement to file additional charges against Defendant or to seek a sentence that takes such conduct into consideration by requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated advisory Guidelines range. Under these circumstances, the United States is free to seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded by the terms of the plea agreement.

16. Waiver of Appellate Rights and Rights to Collateral Attacks.

Defendant acknowledges that by entering the guilty plea required by this plea agreement, Defendant waives all rights to appeal from his conviction and any pretrial rulings of the court. Defendant further agrees that, provided the court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if greater than the Guidelines range) as determined by the court at the time of sentencing, Defendant waives to the full extent of the law:

a. Any right conferred by Title 18, United States Code, Section 3742, to challenge, on direct appeal, the sentence imposed by the court, including any fine, restitution order, probation or supervised release conditions, or forfeiture order (if applicable); and

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation; and

1 This waiver does not preclude Defendant from bringing an appropriate motion
2 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
3 decisions of the Bureau of Prisons regarding the execution of his sentence.

4 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
5 attacking (except as to effectiveness of legal representation) the conviction or sentence in
6 any way, the United States may prosecute Defendant for any counts, including those with
7 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
8 Agreement.

9 17. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
10 Agreement freely and voluntarily and that no threats or promises, other than the promises
11 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
12 guilty.

13 18. **Statute of Limitations.** In the event this Agreement is not accepted by the
14 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
15 the statute of limitations shall be deemed to have been tolled from the date of the Plea
16 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
17 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
18 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

19 19. **Completeness of Agreement.** The United States and Defendant
20 acknowledge that these terms constitute the entire Plea Agreement between the parties.
21 This Agreement binds only the United States Attorney's Office for the Western District
22 of Washington. It does not bind any other United States Attorney's Office or any other

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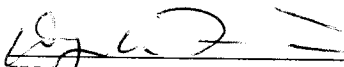
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1 office or agency of the United States, or any state or local prosecutor.


2 Dated this 2 day of November, 2016


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5 
6 NICHOLAS HOGAN
7 Defendant

8 
9 WAYNE FRICKE
10 Attorney for Defendant

11 
12 TODD GREENBERG
13 Assistant United States Attorney

14 
15 BRUCE F. MIYAKE
16 Assistant United States Attorney

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18 ROSE GIBSON
19 Trial Attorney, Civil Rights Division

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21 JARED FISHMAN
22 Special Litigation Counsel
23 Civil Rights Division